

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

JOEL JACOBO SANCHEZ,

No. 2:19-cv-02089-JE

Petitioner,

v.

OPINION AND ORDER

BRANDON KELLY,

Respondent.

MOSMAN, J.,

On October 21, 2022, Magistrate Judge John Jelderks issued his Amended Findings and Recommendation (“F&R”) [ECF 78] recommending that I deny Petitioner’s Amended Petition for Writ of Habeas Corpus [ECF 23], dismiss this case with prejudice, and decline to issue a certificate of appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). Petitioner filed objections to the F&R [ECF 89], to which Respondent replied [ECF 90]. Upon review, I agree with Judge Jelderks. I DENY Petitioner’s Amended Petition for Writ of Habeas Corpus [ECF 23], DISMISS this case with prejudice, and DECLINE to issue a certificate of appealability.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge but

retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

Upon review, I agree with Judge Jelderks's recommendation, and I ADOPT the F&R [ECF 78] as my own opinion. Petitioner's Amended Petition for Writ of Habeas Corpus [ECF 23] is DENIED, and this case is DISMISSED with prejudice. I DECLINE to issue a certificate of appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 1 day of May, 2023.

Michael W. Mosman
MICHAEL W. MOSMAN
Senior United States District Judge